



Ontario's Teaching Regulator  
L'organisme de réglementation  
de l'enseignement en Ontario

November 6, 2023

The Honourable Stephen Lecce  
Minister of Education  
315 Front Street West  
Toronto ON M7A 0B8

Dear Minister Lecce,

**Re: Request for Regulatory Amendments**

At its October 5, 2023 meeting, Council approved that a request be made for amendments to O. Regulation 563/21 (General) (the "Regulation") aimed at removing barriers to the College in meeting its mandate for appointments to Council subcommittees by adjusting the language on term lengths.

The Selection and Nominating Subcommittee of Council is responsible for making recommendations for Council, subcommittee, committee and roster appointments. In fulfilling its mandate, the Subcommittee identified concerns about how to align its recommendations with requirements that are prescribed in the *Ontario College of Teachers Act, 1996* (the "Act") and the Regulation. At present, the Regulation prescribes that the term of appointment to the Selection and Nominating Subcommittee of Council, as well as to statutory and regulatory committees, "shall be two years".

The six non-OCT members of Council are appointed by the Lieutenant Governor under an Order in Council for a three-year term that began on January 1, 2022. The appointed members of Council therefore have only one year of eligible service remaining after December 31, 2023, and under the current requirements of the Regulation, could not be reappointed to a subcommittee for a further two-year term. This restriction would mean that no Council subcommittees could be duly constituted after December 31, 2023.

We note that the Regulation allows for greater flexibility with respect to roster appointments, which are prescribed as being "up to" two years. The College is seeking to adjust the term of office for Selection and Nominating Subcommittee members to ensure that the important work of the subcommittees can continue without interruption after December 31, 2023.

Finally, while it may seem evident that a seat on any subcommittee, committee or roster would be vacated when an individual exceeds the "combined total of six consecutive years" service cap, the College also requests housekeeping amendments that will help eliminate any potential confusion.

A briefing note that provides the background for this request and the proposed regulatory amendments is attached.

The College looks forward to working with the Ministry of Education to make the necessary regulatory amendments as soon as possible.

Sincerely,

A handwritten signature in black ink, appearing to read "Diana Miles". The signature is fluid and cursive, with a large initial "D" and "M".

Diana Miles  
Chair of Council

DM/LL/kb-pgt

A handwritten signature in black ink, appearing to read "Linda Lacroix". The signature is cursive and elegant, with a large initial "L".

Linda Lacroix, OCT/EAO  
Registrar and Chief Executive Officer



Ontario  
College of  
Teachers

Ordre des enseignantes  
et des enseignants  
de l'Ontario

# Briefing Note

## Proposed Amendments to Vary Term Lengths

### Issue

The College proposes that Council request that the Minister of Education amend the *Ontario College of Teachers Act, 1996* (“the Act”) and O. Reg. 563/21 (General) to provide flexibility around term lengths.

### Background

Following a major governance review, significant changes were made to the College’s governance structure, culminating in revisions to the Act. As of January 1, 2022, a Selection and Nominating Subcommittee was established that is responsible for making recommendations regarding appointments to Council, subcommittees, committees and rosters.

In what may have been an attempt to facilitate turnover in the governance structure, the government enacted term limits that include a prohibition against any member of Council, a committee or a roster from serving more than a total of six consecutive years, unless three years has elapsed since the member’s last term (s. 5(4)). Additional requirements were enacted via O. Reg. 563/21 (General), prescribing that the terms of office for OCT members of Council, SNS subcommittee members, and all committee members “shall be two years.” It is notable that roster appointments are for “up to” two

years, which underscores the need to align Council, subcommittee and committee appointments with the same degree of flexibility.

The College supports the concept of total service caps and governance renewal, however the very prescriptive criteria raised questions at the SNS table about the subcommittee’s ability to reappoint individuals if they have less than two years of eligible service left before reaching their six-consecutive-year cap. Or, put differently, could SNS nevertheless reappoint an individual whose mandatory 2-year appointment would cause them to exceed their six-year cap? SNS also sought interpretation on the term “consecutive”.

While the College agrees with the clarity around requiring appointments to be “two years” in length in most cases, the College inquired as to whether a person—appointed to a 2-year term—could be vacated from their role upon becoming ineligible to serve (reaching the six-consecutive-year cap). In response, legal counsel advised that “the Regulation does not provide a mechanism for disqualifying a Council member once they exceed the six-year limit.” This omission was felt to have been intentional, given that other disqualification criteria are explicitly listed in O. Reg. 563/21.

Therefore, the only way to ensure compliance with the Act and Regulation is for Council to “not appoint a person to a two-year term if the two year period would result in the person eventually being in breach of section 5(4) of the Act.”

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### Subsequent Legal Opinion

Although SNS accepted the initial legal opinion, significant operational challenges resulting from this interpretation were identified both during and after the most recent SNS meeting.

For example, non-OCT members of Council are appointed by government under an Order in Council for a three-year term while appointments to SNS, for example, are prescribed as 2-year terms – no more, no less. At the conclusion of the first appointment to SNS, the non-OCT Council members would only have one year of eligibility on Council remaining and therefore could not be reappointed to SNS (given that they can only receive a mandatory 2-year term). While other remaining non-OCT Council members could theoretically fill that role, they too would only have one year remaining and would therefore also be ineligible. As a result, there would be no non-OCT Council members available and SNS could not be duly constituted.

Following this and other inquiries, legal counsel identified a number of considerations. While recognizing that granting a 2-year SNS appointment to a non-OCT who *theoretically* has multiple years of service remaining—despite not knowing if their Order in Council will be renewed—would make life easier, legal counsel reiterated that no explicit mechanism exists to remove that individual from SNS if they were *not* reappointed to Council. This remains consistent with their

original legal opinion, with the caveat that the concern may be merely hypothetical, given their expectation that any reasonable person would agree that they would not remain a member of the SNS if they were no longer a member of Council.

Legal counsel have therefore identified regulatory amendments intended to:

- vary appointment lengths to give more flexibility to match future appointments to remaining terms of office and remaining eligibility within the 6-year limit;
- vacate a seat if a subcommittee member ceases to be on Council, which will ensure that if a member of SNS is not reappointed to Council or is no longer a member of Council for any reason, they automatically cease to be a member of SNS; and
- disqualify a person from continuing to serve if they exceed the six-year limit.

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### Additional Considerations

Should regulatory changes be made to allow greater flexibility regarding terms of office, Council may wish to establish best practices around reappointment, namely the minimum duration remaining for a governance participant to be eligible for reappointment (e.g. a minimum of 12 months, 18 months, etc.)

For greater clarity, the regulatory amendments should also make clear that the changes apply to all three subcommittees of Council.

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### Recommendations

SNS recommends that Council request that the Minister of Education make the following changes to O. Reg. 563/21 (General):

1. Amend section 9(1) to permit appointments of “up to” 2 years.
2. Amend section 11(1) to add that the seat becomes vacant if the member is no longer a Council member.
3. Amend section 35(1) to add that Council can disqualify a person from continuing

to serve because they exceed the six-year limit described in s. 3(1)(f).

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**Prepared by:**

Policy and Governance Unit

**Date:**

September 13, 2023